

ATTACHMENT A

After receiving input from stakeholders, DSHS's Residential Care Services has revised Chapter 388-107 WAC to operationalize the Enhanced Services Facilities (ESF) program.

Immediate Adoption is Necessary for Public Safety and General Welfare

The Washington State Operating Budget directs the department to implement Chapter 70.97 RCW, which requires the establishment of Enhanced Services Facilities (ESF). ESFs are intended to relieve pressure on institutional mental health settings such as Eastern and Western State Hospitals. If certain patients are relocated to ESFs, more beds will be available to those who need an institutional level of mental health care.

Due to shortage of beds at evaluation and treatment centers and Western and Eastern state hospitals, some patients have been kept in non-psychiatric acute care hospital settings such as Emergency Rooms and medical surgical units. In the case known as *In re: the Detention of D.W, et al. v. Department of Social and Health Service*, the Washington state supreme court found these placements, known as "psychiatric boarding", to be unconstitutional. In order to comply with *D.W*, DSHS needs to immediately develop alternatives to institutional mental health settings in order to reduce the need for psychiatric boarding. Therefore, adoption of these rules, which will allow ESFs to become licensed and begin operation, is an urgent and time-sensitive matter of public safety and general welfare.

Immediate Adoption is Necessary to Receive Federal Funds

In order to qualify for federal matching funds, the ESF program must conform to federal Center for Medicare/Medicaid Services (CMS) Home and Community Based Services (HCBS) requirements. These federal requirements became effective after the initial ESF rules were adopted. In order to ensure that payments for ESF services will qualify for federal funding under the HCBS requirements, the proposed rule amendments need to be adopted immediately.